

## **PI Committee: Scottish Government Policy Update**

This paper provides updates from the Scottish Government on the following:

1. Courts Reform Bill
2. Damages Bill
3. Apologies Member's Bill
4. Taylor Review
5. No Fault Compensation

### **1. Courts Reform Bill**

The proposals in the Courts Reform (Scotland) Bill look to restructure the way civil cases and summary criminal cases are dealt with by the courts in Scotland. They are intended to provide the legal framework for implementing the majority of recommendations of the Scottish Civil Courts Review (the "SCCR"), led by Lord Gill.

Key measures proposed in the Bill are:

- a significant rise in the exclusive competence of the sheriff court (i.e. the monetary threshold below which a case must be raised in the sheriff court) from £5,000 to £150,000. This will have the effect of removing a large proportion of the low value casework from the Court of Session to the sheriff courts thus permitting the Court of Session to concentrate on the most legally complex and important cases
- the creation of a new lower tier of judiciary, the "summary sheriffs" to hear summary criminal cases, family cases and lower value civil business in the sheriff courts
- the creation of a new Sheriff Appeal Court with jurisdiction over summary criminal appeals and civil appeals, and a new Scotland-wide specialist personal injury sheriff court in Edinburgh
- a major restructuring and improvement of the handling of summary crime and criminal appeals in the sheriff courts, the new Sheriff Appeal Court and the High Court

### **Timescale**

- The consultation on the Courts Reform (Scotland) Bill closed on 31 May
- The Courts Reform (Scotland) Bill, subject to Ministerial agreement, will be introduced to the Scottish Parliament in early 2014.

Attached links:

Scottish Civil Courts Review

<http://www.scotcourts.gov.uk/about-the-scottish-court-service/the-scottish-civil-courts-reform>

SG response

<http://www.scotland.gov.uk/Resource/Doc/330272/0107186.pdf>

SG consultation on draft Courts Reform (Scotland) Bill

<http://www.scotland.gov.uk/Publications/2013/02/5302/0>

Responses to consultation

<http://www.scotland.gov.uk/Publications/2013/06/2336>

Analysis of the responses to consultation will be published later in August.

**SG Lead: Cameron Stewart  
Civil Law and Legal System  
Directorate for Justice**

## **2. Damages Bill**

The Scottish Government recently consulted on issues surrounding damages for personal injury. The consultation paper was informed by the SLC report and recommendations on Limitation and Prescribed Cases and sought views on a number of issues, including whether the limitation period should be extended from 3 to 5 years and whether there should be a statutory list of factors for the court to consider when asked to exercise its discretion to allow a case to proceed out with the limitation period.

The consultation, which closed in March, can be viewed at:

<http://www.scotland.gov.uk/Publications/2012/12/5980> .

Responses and an analysis of the consultation can be viewed at

<http://www.scotland.gov.uk/Publications/2012/12/5980>.

The Scottish Government is now considering its response.

The Scottish Government have recently consulted twice as part of a UK wide consultation process on the Discount Rate. Both consultations “The Damages Act 1996 – The Discount Rate– How Should it be Set?” and “The Damages Act 1996 – The Discount Rate - Review of Legal Basis” are now closed and the responses are currently under consideration.

**SG Lead: Jill Clark  
Civil Law Reform Unit  
Directorate for Justice**

### **3. Apologies (Margaret Mitchell member's) Bill**

This is a proposal for a Bill to provide that an expression of apology does not amount to an admission of liability and is inadmissible as evidence, for the purposes of certain legal proceedings.

Consultation on the proposal closed on 28 September 2012. It is not clear what Mrs Mitchell's intentions are at present. A link to the consultation document is attached:

[http://www.scottish.parliament.uk/S4\\_MembersBills/20120708\\_Apologies\\_Consultation\\_corrected.pdf](http://www.scottish.parliament.uk/S4_MembersBills/20120708_Apologies_Consultation_corrected.pdf)

**SG Lead: Jill Clark**  
**Civil Law Reform Unit**  
**Directorate for Justice**

### **4. Taylor Review**

This independent review, which is being carried out by Sheriff Principal James Taylor, is to review the costs and funding of civil litigation in the Court of Session and Sheriff Court in the context of the recommendations of the Scottish Civil Courts Review, and the response of the Scottish Government to that review.

The terms of reference for the review are:

“To review the costs and funding of civil litigation in the Court of Session and Sheriff Court in the context of the recommendations of the Scottish Civil Courts Review, and the response of the Scottish Government to that review.

In undertaking this review, to:

- consult widely, gather evidence, compare our expenses regime with those of other jurisdictions and have regard to research and previous enquiries into costs and funding, including the Civil Litigation Costs Review of Lord Justice Jackson
- consider issues in relation to the affordability of litigation; the recoverability and assessment of expenses; and different models of funding litigation (including contingency, speculative and conditional fees, before and after the event insurance, referral fees and claims management)
- consider the extent to which alternatives to public funding may secure appropriate access to justice, and pay particular attention to the potential impact of any recommendations on publically funded legal assistance
- have regard to the principles of civil justice outlined in Chapter 1, paragraph 5 of the Civil Courts Review
- consider other factors and reasons why parties may not litigate in Scotland

- report with recommendations to Scottish Ministers, together with supporting evidence within 18 months of the work commencing.”

Attached is a link to the Taylor review pages on the Scottish Government website which contains links to relevant documents including the consultation paper.

<http://scotland.gov.uk/About/Review/taylor-review>

### **Timescale**

It is currently anticipated that the final review will be published on 11 September 2013.

**Secretary to the Review: Kay McCorquodale**  
**Review of Expenses and Funding of Civil Litigation**  
**Directorate for Justice**

### **5. No Fault Compensation**

**Policy aim/outcome:** To consider the potential benefits for patients in Scotland of a no-fault compensation scheme for injuries as a result of medical treatment, and whether such a scheme should be introduced alongside the existing clinical negligence arrangements

Report of No Fault Compensation Review Group which recommended the introduction of a no fault system along the lines of the system currently in operation in Sweden and the Scottish Government response to it were published in February 2011. The report, which includes suggestions for improvements to the existing legal system, is available at:

<http://www.scotland.gov.uk/Topics/Health/Policy/No-Fault-Compensation;>

Associated research report/costings were published in June 2012 and are available at:

<http://www.scotland.gov.uk/Topics/Health/Policy/No-Fault-Compensation;>

A public consultation on the Review Group’s recommendations was completed in December 2012 and is available at: <http://www.scotland.gov.uk/Publications/2012/08/4456>

A Scottish Government response to the consultation on the recommendations of the No-fault Compensation Review Group, which will include the proposed way forward, will be published shortly.

**SG Lead: Sandra Falconer**  
**Person Centred**  
**Directorate for Chief Nursing Officer, Patients, Public and Health Professions**